



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

March 7, 2000
AO-00-03

Richard E. Gardiner, Esq.
10560 Main Street, Suite 404
Fairfax, VA 22030

Re: Contributions by federal PAC to Massachusetts political committees

Dear Mr. Gardiner:

This letter is in response to your request for an opinion regarding contributions to a Massachusetts political committee by your client, a national, not-for-profit, incorporated membership association (“the association”). The association has a separate segregated fund registered with the Federal Election Commission (“the federal PAC”).

You have stated that the association, through the federal PAC, wishes to contribute funds to a Massachusetts candidate committee that has filed a statement of organization pursuant to M.G.L. c. 55, § 5. You have asked several questions regarding the application of M.G.L. c. 55, the Massachusetts campaign finance law, to the federal PAC.

Questions and Answers

- (1) Does the limit on contributions of \$500 in any one calendar year (Chapter 55, § 6) apply to contributions by the federal PAC to the Massachusetts candidate committee, or may the federal PAC make unlimited contributions to such a candidate committee?

Answer: *Regardless of amount*, the federal PAC is prohibited from making contributions to a Massachusetts candidate committee.¹

¹ The prohibition also applies to contributions made to Massachusetts PACs, people’s committees, and party committees. It does not apply, however, to contributions made to ballot question committees. A federal political committee could make such contributions without limit. The committee would, however, be required to disclose its expenditure. See M.G.L. c. 55, § 22.

- (2) Chapter 55, § 7 prohibits a candidate or his committee from receiving “a transfer of funds or assets from any federal political committee.” Does this prohibition apply to a federal political committee that files a statement of organization in Massachusetts as a “political committee” pursuant to Chapter 55, § 5?

Answer: Yes, section 7 prohibits a federal political committee from transferring funds to any Massachusetts political committee except a ballot question committee. Therefore, the federal PAC may not transfer funds to a newly created Massachusetts PAC. A federal committee may not register in Massachusetts and use funds previously raised for the federal PAC. It may, however establish a new, separate committee, i.e., a Massachusetts PAC, to raise, spend and disclose funds in accordance with the Massachusetts campaign finance law. The funds raised by the Massachusetts PAC must be in a separate, segregated fund, i.e., not commingled with funds raised by the federal PAC.

- (3) If Chapter 55, § 7 prohibits a candidate or his committee from receiving a “transfer of funds or assets from any federal political committee” which has filed a statement of organization in Massachusetts as a “political committee” pursuant to Chapter 55, § 5, what is the “sufficiently important interest” which justifies the prohibition, and how is that prohibition “closely drawn” to match that “sufficiently important interest”?

Answer: The prohibition helps ensure that only funds raised and disclosed in accordance with the Massachusetts campaign finance law are used to influence Massachusetts candidate elections.

Discussion

As noted in your letter, section 7 prohibits the “transfer of funds or assets from any federal political committee” to any candidate or candidate committee organized in accordance with the Massachusetts campaign finance law. This provision, added to the campaign finance law by c. 394 of the Acts of 1998, is consistent with the office’s longstanding interpretation of the campaign finance law. See IB-82-01, in which the office states that a non-Massachusetts PAC must establish a separate Massachusetts PAC and register the PAC with OCPF if it wishes to contribute to Massachusetts PACs or candidates.

The statutory basis for the interpretation in IB-82-01 was the language in section 6 of the campaign finance law.² After defining the expenditures which may be made by candidate committees, the statute provides that “any other political committee **duly organized** may receive, pay and expend . . . [and that] such committee may contribute to other political committees.” See M.G.L. c. 55, § 6 (second paragraph, emphasis added). PACs not organized in Massachusetts are not “duly organized” with this office.

IB-82-01 (a copy of which is enclosed) states:

² When IB-82-01 was drafted section 7 did not state that candidate could not accept a transfer of funds from a federal political committee. Chapter 394 of the Acts of 1998 added this language.

A political committee must be organized under and in compliance with the provisions of M.G.L. c.55 in order for it to contribute to Massachusetts candidates or Massachusetts political committees. Thus, for example, if a non-Massachusetts PAC wishes to participate in campaign finance activity in Massachusetts, at the state, county or municipal level, it must comply with M.G.L. c. 55. **Specifically, the non-Massachusetts PAC must establish a separate, financially segregated account, i.e. a Massachusetts PAC, and register the PAC with OCPF.** Moreover, if the non-Massachusetts PAC provides any support services to a Massachusetts PAC such as office space, phones or staff, the Massachusetts PAC must reimburse the non-Massachusetts PAC in full for such services. Otherwise, such services would constitute an "in-kind" contribution to the Massachusetts PAC by the non-Massachusetts PAC, a political committee not registered with OCPF. **Similarly, non-Massachusetts candidate committees may not contribute to Massachusetts PACs, candidates or candidate committees.**

IB-82-01, revised May 21, 1997, (emphasis in original). See also AO-97-08 (advising that separate committees, not a single PAC, would need to be created if the intent of the organizers is to support both federal and state candidates) and AO-93-01 (and earlier opinions cited therein). In AO-93-01 the office advised that:

If out-of-state political committees were allowed to contribute to Massachusetts political committees then the result would be the possibility of allowing prohibited funds to be contributed to Massachusetts political committees . . . Even assuming that [an association] receives no corporate contributions, it would be an impossible task for this office to monitor all contributions by political committees unregistered with the Office to ensure that they were in compliance with Massachusetts campaign finance law.

It is not the role of this office to rule on the constitutionality of Massachusetts law. We have no reason to believe, however, that the prohibition in section 7 does not comply with the standard established by the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976) and re-affirmed in Nixon v. Shrink Missouri Government PAC, 68 U.S.L.W. 4102 (1/24/00). These cases demonstrate that states may regulate or prohibit the source and amounts of contributions in order to avoid undermining citizens' confidence in the integrity of the electoral process. The statute mirrors a fundamental aspect of federal law; i.e. Massachusetts law regulates or prohibits the receipt of money raised by federal political committees just as federal law regulates or prohibits the receipt by federal committees of money raised by state political committees.³ The interest in ensuring that funds used to influence candidate elections in Massachusetts are raised in accordance with the campaign finance law is a "sufficiently important interest" justifying section 7's prohibition. In addition, the prohibition is "closely drawn" to match that interest, i.e., it only prohibits *political committees*, i.e., groups that raise and spend money to influence elections, from contributing to candidates.

³ Massachusetts and federal limits on contributions differ significantly. Compare M.G.L. c. 55, § 7A (limiting individual contributions to \$500) and 2 U.S.C. 441a (limiting such contributions to \$1,000) and M.G.L. c. 55, § 8 (prohibiting expenditures which are made to indirectly influence a candidate's election) and 11 C.F.R. § 114.5(b) (allowing a corporation to pay the costs to administer a separate segregated fund). Even if the limits were the same, however, Massachusetts would have a sufficiently compelling basis for restricting receipt to contributions raised in accordance with the campaign finance law.

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Although the association's *PAC* may not contribute to a Massachusetts candidate, *the association* may be able to use its funds for such purposes, with certain limitations. We strongly urge the association, however, to call the office for guidance before using association funds for such purposes.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and in your conversation with OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line.

Michael J. Sullivan
Director